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MICHAEL ROBAK, JR.,

SINGLE APPENDIX

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1031

LEONARD TONASKET,
Appellant,

v.

THE STATE OF WASHINGTON

and

THE SUPERVISOR OF THE TAX COMMISSION
OF THE STATE OF WASHINGTON,
Respondents.

APPEAL FROM THE SUPREME COURT OF
THE STATE OF WASHINGTON

AUGUST 1, 1972
JURISDICTIONAL STATEMENT FILED FEBRUARY 12, 1972
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LEONARD TONASKET,
Appellant,

v.

THE STATE OF WASHINGTON

and

THE SUPERVISOR OF THE TAX COMMISSION
OF THE STATE OF WASHINGTON,
Respondents.

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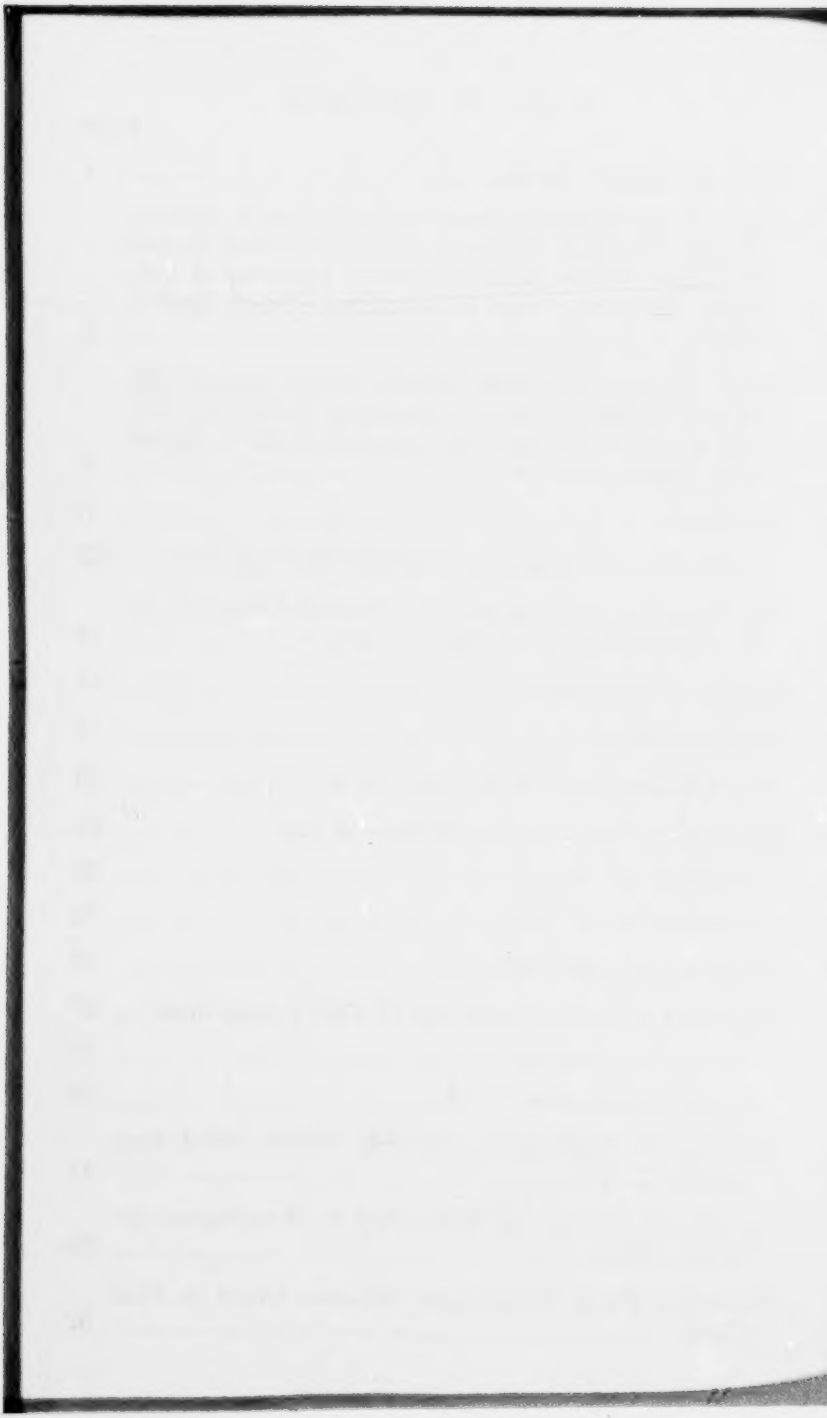

RELEVANT DOCKET ENTRIES

Title of Case:

LEONARD TONASKET
Appellant,

v.

THE STATE OF WASHINGTON and
THE SUPERVISOR OF THE TAX COMMISSION
OF THE STATE OF WASHINGTON,
Respondents.

Date	Proceedings	Single Appendix Page No.
1967		
March 8	Complaint filed.	6
July 10	Stipulation striking plaintiff's second cause of action regarding retail sales of liquor filed.	14
Aug. 23	Answer of defendant State of Washington filed.	14
Aug. 28	Reply to defendants' answer filed.	18
1968		
Oct. 7	Memorandum Opinion of trial court filed upholding application of state excise taxes to retail sales on the Colville Indian Reservation.	19
1969		
Jan. 21	Findings of Fact and Conclusions of Law of trial court filed.	22
Jan. 21	Judgment of trial court filed upholding application of state excise taxes to retail sales on the Colville Indian Reservation.	26
Jan. 23	Notice of Appeal to Washington Supreme Court filed.	Not included

Date	Proceedings	Single Appendix Page No.
1971		
Sept. 2	Washington Supreme Court rendered its opinion upholding application of state excise taxes to retail sales on the Colville Indian Reservation.	41
Oct. 4	Petition for Rehearing by Washington Supreme Court filed.	55
Nov. 15	Remittitur issued by the Washington Supreme Court making the Judgment of the Washington Supreme Court final as of November 15, 1971.	57
Dec. 10	Notice of Appeal to the United States Supreme Court filed.	Not included
1972		
Feb. 12	Jurisdictional Statement filed with the United States Supreme Court.	Not included
June 12	Probable Jurisdiction noted by United States Supreme Court.	Not included

LETTER FROM SUPERINTENDENT, COLVILLE INDIAN AGENCY, BUREAU OF INDIAN AFFAIRS, TO AREA DIRECTOR OF BUREAU OF INDIAN AFFAIRS ASKING FEDERAL APPROVAL OF CIGARETTE INVENTORY LOAN TO APPELLANT, DATED APRIL 9, 1964.

Credit
240.4

Colville Indian Agency
Coulee Dam, Washington

April 9, 1964

Mr. Robert D. Holtz, Area Director
Portland, Oregon
Attention: Branch of Credit

Dear Mr. Holtz:

Attached is a loan application from Leonard Tonasket for $1,000.00 to build up his inventory in a store which he is leasing in East Omak. The Credit Committee recommended approval of the loan in the amount of $800.00, and since this is a minor change we did not revise the financial statement and estimated income and expenses accordingly.

The Tonaskets had a loan on a store in Grand Coulee but because of the low net income they quit operating the store and tried to sell their inventory and equipment. Some of the equipment they have moved to the store in East Omak. Their primary income from the store in Omak is from the sale of cigarettes since they are located on trust land and able to sell cigarettes tax free. The Tonaskets have operated this business for five weeks and have shown

a good profit but they have run out of cigarettes each week because they are not able to stock a sufficient quantity to meet the demand.

The original loan was secured by a mortgage on Mr. Tonasket's allotment, a copy of which is attached, and unless a new mortgage is required we will consider this mortgage as security for this loan. Approval of the loan is recommended.

Sincerely yours,

Superintendent

Attachments

I certify that this is a true copy of official Bureau of Indian Affairs records in my custody.

s/ W. SHERWIN BROADHEAD

Date: 5-22-71

Certifying Officer

LETTER OF LOAN SPECIALIST, COLVILLE INDIAN AGENCY, BUREAU OF INDIAN AFFAIRS, TO APPELLANT INDICATING FEDERAL APPROVAL OF CIGARETTE INVENTORY LOAN TO APPELLANT, DATED APRIL 16, 1964.

Credit
240.4

Colville Tribal Credit Office
Nespelem, Washington

April 16, 1964

Mr. Leonard Tonasket
Omak Washington

Dear Mr. Tonasket:

We have received approval of your loan application for an additional $800.00 provided that a new mortgage be taken on allotment S-2026. We have prepared a new note with the first payment being due June 1, rather than May 1, since the mortgage will have to be approved before we can advance funds. Enclosed is a promissory note and mortgage for you and your wife to sign. Please have all three copies of the mortgage notarized and return these documents to this office as soon as possible.

Sincerely yours,

Arthur E. Kalmen
Loan Specialist

Enclosures

I certify that this is a true copy of official Bureau of Indian Affairs records in my custody.

s/ W. Sherwin Broadhead
Certifying Officer

Date: 5-22-71

COMPLAINT

(Title omitted in printing)

Comes now the Plaintiff, and for cause of action against the Defendants alleges as follows, to-wit:

I.

That the Plaintiff is now, and was at all times herein mentioned, a full blooded Indian, and a duly enrolled member of the Confederated Tribes of the Colville Indian Reservation. This Paragraph shall apply as to all causes of actions set forth herein.

II.

That at all times herein mentioned, and this applies to all causes of actions set forth herein, the Confederated Tribes of the Colville Indian Reservation have not been terminated by the United States of America, and are still in a trust status.

III.

That at all times herein mentioned, including all causes of actions herein set forth, the Plaintiff is and was a ward of the Government of the United States of America as a result of his being an Indian and member of the Confederated Tribes of the Colville Indian Reservation.

IV.

That at all times herein mentioned, the Plaintiff did operate a retail business, of selling cigarettes, on lands, the same being allotted lands, held in trust by the United States of America.

V.

That the State of Washington, by and through their agents, including the Supervisor of the Washington State

Tax Commission, have harassed and confiscated retail merchandise, including cigarettes, in an amount as set forth in the Inventory attached herewith, and by reference incorporated herein, as though set forth in full, marked Exhibit "A".

VI.

That the acts aforesaid did occur on or about the 9th day of February, 1967, and/or the 10th day of February, 1967. In addition to the foregoing the State of Washington did charge the said Plaintiff under Information, Okanogan County Cause No. 05284 with four (4) counts of violating Registration requirements of the Tax Commission of the State of Washington, failing to have proper stamps on cigarettes in accordance with RCW 82.24.050 and 82.24.110, further Engaged in the Business of Selling Cigarettes without first having obtained a License to do so as provided in RCW 19.91.120 and RCW 19.91.170, and was Selling Cigarettes without a stamp affixed on every package thereof as required under RCW 82.24.050 and RCW 82.24.110.

VII.

That in addition to the foregoing charges the agents of the State of Washington have instructed the Plaintiff not to sell cigarettes to any White person on the lands as aforesaid described under the penalty of further criminal charges being filed.

VIII.

That the Plaintiff has no plain, adequate and speedy remedy at law.

IX.

That unless the State of Washington, and the Super-

visor of the Washington State Tax Commission are enjoined from further interference of the Plaintiff in the operation of selling retail, including the selling of cigarettes, without registering or affixing stamps thereon, including the filing of criminal charges, it is going to compel the Plaintiff to cease operation of business in the retail selling of cigarettes and other items of merchandise unto those not of the Indian race.

X.

That the State of Washington, by and through its agents, the Washington State Tax Commission promulgated rules and regulations setting forth that the Indians had rights that allotted Indians who are wards of the United States of America, conducting business within the confines of an Indian Reservation or on allotted lands had the right to sell items at retail without being licensed by the State of Washington or paying any tax thereto, including, but not limited to, cigarettes. That the State of Washington and the Tax Commission are estopped to assert any rights to tax or confiscate items as aforesaid under the laws of the State of Washington.

By way of Second cause of action the Plaintiff alleges as follows, to-wit:

I.

That the Plaintiff re-alleges all of the allegations in the First cause of action relative to his status as an Indian and the status of the property upon which he conducts his business.

II.

That the Plaintiff has made application, and will be granted, a retail Liquor License. That the Plaintiff has

been advised by agents of the State of Washington that he is not authorized to conduct the business of selling by retail Liquor by the bottle, including wine, beer, and hard liquor of other varieties, unless legally licensed; that in fact the State will not legal license any person to sell hard liquor of other varieties by the bottle; that under the Plaintiff's status as an Indian and the status of the land upon which he conducts his business he is authorized, as long as he is licensed by the United States of America, to so conduct a business.

III.

That unless the State of Washington is so enjoined they will interfere and prevent the said Plaintiff from operating said business and will file criminal charges against him for violating the laws of the State of Washington.

IV.

That the Plaintiff has no adequate and speedy remedy at law.

V.

That unless the State of Washington is enjoined from interfering in the operation of said business of selling liquor by retail, including hard liquor by bottle of other varieties, or in the alternative that a declaratory Judgment is entered declaring that the Plaintiff is entitled to sell liquor as aforesaid, it will work an extreme hardship and disability upon the said Plaintiff.

VI.

That in the event the Court would consider an action for declaratory Judgment under this cause of action it would be of a beneficial nature to both the State of Washington and the Indians who are allotted and wards of the

United States of America, and who operate businesses within the confines of an Indian Reservation or on allotted Indian land.

By way of a Third cause of action the Plaintiff alleges as follows, to-wit:

I.

Plaintiff re-alleges all Paragraphs relative to his status as to an Indian and the premises upon which he conducts his business.

II.

That in addition to the business activities in the foregoing two causes of actions the Plaintiff intends and desires to enter into a retail business on the aforesaid premises including but not limited to, all articles of merchandise, wearing apparel and appliances.

III.

That your Plaintiff verily believes that unless he registers with the State of Washington, and obtains a Certificate of Registration from the Tax Commission as required by the laws of the State under RCW 82.32.030 and RCW 82.32.290, and collects retail Sales Tax under the laws of the State of Washington that he will be harassed and interfered with by the State of Washington and specifically by the agents of the Supervisor of the Washington State Tax Commission.

IV.

That the Plaintiff has no adequate and speedy remedy at law.

V.

That under the foregoing circumstances the Court should enter a declaratory Judgment setting forth the rights and status of the Plaintiff as to what requirements he is required to operate under as to the laws of the State of Washington relative to doing business, affixing tax stamps, collecting and remitting retail Sales Tax.

WHEREFORE, Plaintiff prays for Judgment against the Defendants as follows, to-wit:

1. On Plaintiff's first cause of action that the Court permanently enjoin the Defendants from interfering, taxing, harassing, or in any way preventing the Plaintiff, whether through criminal charges or otherwise, from operating the retail business of selling cigarettes in and on the premises, whether to Indian or non-Indian, as set forth in this Complaint; Plaintiff further prays that the Court enter an Order directing the Defendants to return all cigarettes confiscated as set forth in Exhibit "A", or in the alternative to reimburse them for the market value thereof.

2. Plaintiff prays on second cause of action that the Court enter an Order enjoining the Defendants from interfering with the Plaintiff's operation of selling liquor by retail, including hard liquor by bottle of other varieties, or in the alternative that the Court enter a declaratory Judgment declaring that the Plaintiff is entitled to sell liquor as set forth in the within and foregoing Complaint.

3. In the Third cause of action Plaintiff prays that the Court enter a declaratory Judgment setting forth and spelling out the rights and status of the Plaintiff as to what requirements, if any, he is required to operate under as to

the laws of the State of Washington relative to doing business, affixing tax stamps, regardless of nature and collecting and remitting Sales Tax.

4. In addition to the foregoing the Plaintiff prays for such other and further relief as to the Court may deem just, equitable and proper, and for Plaintiff's costs and disbursements incurred herein.

HANCOCK & KOHLS
By: s/ B. E. Kohls

Attorneys for Plaintiff

(Verification omitted in printing)

13

EXHIBIT A

FL 218
Rev. 2/15/66

TAX COMMISSION OF THE STATE OF WASHINGTON

INVENTORY OF CONFISCATED CIGARETTES

Date of Confiscation Feb. 10, 1967

Name Leonard Tonasket

Address _____ City Omak, Wash.

Brand	No. Cartons	Brand	No. Cartons
Alpine	6, Menthol 4	Melachrino	
Avalon		Montclair	19
Bel Air	23	Murad	
Benson & Hedges		Newport	27
Brandon		Oasis	
Camel	29, 5, Filter	Old Gold	20 Kings, 12 Reg 14 Filter 5
Carlton	9	Pall Mall	5 - 13 Filter
Cavalier		Parliaments	6
Chesterfield	22 Reg, Menthol 1, Filter 8	Paxton	
Devon		Philip Morris	10 Reg, 19 Kings, 30 Filter 5 Ment
Domino	39 Filter, 46 Plain, 1 plain 9 Filt.	Raleighs	5 plain, 11 Filter 8 plain 3 Filter
Duke		Rameses	
Du Maurier		Regents	
Dunhill		Salem	19
Embassy		Sano	
Fatimas		Spring	20, 1
Galaxy	20	Spud	
Half & Half		Sweet Caporal	
Holiday		Tareyton	2
Hit Parade		Tempo	6, 1
Kent	20, 10	Tennyson	4
Kools	35 11 Filter	Viceroy	14
Lark	12, 4	Wings	9
Life		Vogue	
L & M	13, Kings 7, 5,	Winston	9
Lucky Strike	17, 12, Filter 7, Menth 10	York	15
Mapleton		Lucky Filter	19
Marlboro	18, 5, 14,	Herbert Tareyton	10
Marvels		Half & Half	15, 4
Masterpiece		Philip Morris Filters	--10 Menthol
Prince Albert	- 8	Yukon	14
True Menthol	- 5	Waterford	6
True	18		
Frappe	- 2		
	Total		Total

Total 1st. Column _____

Total Confiscated _____

By /s/ Cal Wilson
Agent

MISCELLANEOUS TAX SECTION
CIGARETTE TAX DIVISION

STIPULATION STRIKING APPELLANT'S SECOND CAUSE OF ACTION REGARDING RETAIL SALES OF LIQUOR.

(Title omitted in printing)

Comes now both the Plaintiff and the Defendants, and herewith stipulate, by and through their respective counsel, that the Plaintiff's second cause of action be stricken from the Complaint and further that Paragraph II. of Plaintiff's prayer likewise be stricken.

Dated this 10th day of July, 1967.

(Signatures omitted in printing)

ANSWER TO COMPLAINT

(Title omitted in printing)

COMES NOW the State of Washington, defendant above named, by John J. O'Connell, Attorney General, and J. Richard Duggan, Assistant Attorney General, and for answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

For answer to paragraphs I, II, and III of the plaintiff's first cause of action, defendant lacks knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

II.

For answer to paragraph IV of the plaintiff's first cause of action, defendant State of Washington admits that plaintiff did operate a retail business which included the sale of cigarettes, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained therein and therefore denies the same.

III.

For answer to paragraph V of the plaintiff's first cause of action, defendant admits that its agents did participate in the seizure of the cigarettes listed in the inventory, a copy of which is marked Exhibit "A" and attached to the complaint, but denies all other allegations contained therein.

IV.

For answer to paragraph VI of the plaintiff's first cause of action, defendant admits that the seizure of the cigarettes indicated on the plaintiff's Exhibit "A" took place on February 10, 1967, and that plaintiff has been charged with one count each of the crimes of engaging in business without a valid registration certificate, of engaging in the business of selling cigarettes without a valid license to do so, of having cigarettes in possession without the proper stamps affixed thereto, and of selling cigarettes without the proper stamps affixed thereto, but denies all other allegations contained therein.

V.

For answer to paragraphs VII, VIII, IX and X of the plaintiff's first cause of action, defendant admits that it has adopted and promulgated its Rule 192, a copy of which is marked Exhibit "A" attached hereto, and by reference incorporated herein, but specifically denies each and every other allegation contained therein.

VI.

For answer to paragraph I of plaintiff's third cause of action defendant hereby denies or admits the allegations contained in the paragraphs referred to in the complaint in the same manner and to the same extent as in the appropriate foregoing paragraphs of this Answer.

VII.

For answer to paragraphs II and III and plaintiff's third cause of action, defendant lacks knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

VIII.

For answer to paragraphs IV and V of plaintiff's third cause of action defendant specifically denies each and every allegation contained therein.

For affirmative defenses, defendant alleges as follows:

I.

That at all times herein mentioned defendant State of Washington was and now is one of the sovereign states of the United States of America and is entitled to defend this action.

II.

That the defendant is vested with authority to adopt and enforce legislation for the government of the territory within its boundaries.

III.

That the defendant has, in the exercise of this authority, adopted legislation declaring certain acts and series of acts to be felonies, gross misdemeanors or misdemeanors, which acts and series of acts are by reason of such declaration crimes against the State of Washington when performed within the boundaries of said state.

IV.

That this legislation defining crimes against the State of Washington applies to the acts or series of acts falling within such definitions performed by any person, regard-

less of race, creed or national origin, in any part of this state not specifically removed from the jurisdiction of this state by supervening legal authority.

V.

That the plaintiff is not, at any time or under any circumstances mentioned in this action, excused from the duty of compliance with the legislation of this state defining crimes.

WHEREFORE, defendant demands judgment against plaintiff as follows:

1. That on plaintiff's third cause of action, the court enter its declaratory judgment to the effect that in the conduct of a business on the Colville Indian Reservation, the plaintiff is subject to the legislation of the state of Washington defining crimes.

2. That the plaintiff take nothing by way of its first cause of action, and that his requests for an injunction and for an order to return cigarettes be denied.

3. That the defendant be awarded costs, fees and disbursements, and such other and further relief as may seem to the court just and equitable in the premises.

DATED at Olympia, Washington, this 21st day of August, 1967.

(Signatures omitted in printing)

REPLY TO ANSWER

(Title omitted in printing)

Comes now the Plaintiff above named, by and through his attorneys of record, Hancock & Kohls, B. E. Kohls of Counsel and for reply to Defendants' Affirmative defense admits, alleges and denies as follows, to-wit:

I.

For reply to the Defendants' affirmative defenses paragraphs I. through V. the Plaintiff denies each and every allegation, matter and thing therein contained inconsistent with the Plaintiff's complaint.

WHEREFORE, Plaintiff prays for relief originally sought in his Complaint.

Dated at Omak, Washington this ..... day of August, 1967.

(Signatures omitted in printing)

MEMORANDUM OPINION OF TRIAL COURT

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

LEONARD TONASKET, *Plaintiff,* vs. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Defendants.*	No. 38791 MEMORANDUM OPINION

This matter came on for trial with the Plaintiff seeking a declaratory judgment as against the state of Washington and the Tax Commission and seeking to enjoin the state of Washington from interferring with the Plaintiff in the selling of cigarettes at retail. The Plaintiff was represented by his attorney, Mr. B. E. Kohls and the defendant was represented by its attorney, Mr. J. Richard Duggan, Assistant Attorney General. After taking testimony and hearing the arguments of counsel, and receiving briefs of the parties, the Court took the matter under advisement. Subsequently, it was called to the attention of the Court that an opinion has been rendered by the supreme court in the case of the *Makah Indian Tribe v. Clallam County,* 73 Wn. 2d 683. The Court called this matter to the attention of counsel as to whether they wished to submit additional briefs. Additional briefs were submitted. The Court has considered the testimony, the arguments and the briefs.

The Court does not feel that there is any necessity of reiterating the facts in this case as there appears to be no conflict or dispute as to the facts and the Court is satisfied that the Plaintiff is a member of the Colville Confederated

Tribes. The Plaintiff has gone to great lengths in arguing and submitting his briefs to cover the law relating to taxation of Indians on Indian reservations and cites the leading case of *Warren Trading Post Co. v. Arizona Tax Commission*, 1965 Arizona, 85 S.Ct. 1242, 380 U.S. 685, 14 L. ed 2d 165, in which the Supreme Court of the United States held that under the commerce clause of the United States Constitution, being Article I, Section 8, Clause 3, Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens on traders in the form of taxes. The Plaintiff further cites the case of *Makah Indian Tribe v. Tax Commission*, 72 Wn. 2d 608 and also *Makah Indian Tribe v. Clallam County*, 73 Wn. 2d 683 as additional authorities.

The Court is familiar with *Makah Indian Tribe v. Tax Commission*, supra, in that this Court was the judge originally hearing that case.

While these cases undoubtedly point out the law governing in those situations, there is one additional fact found here that must be taken into consideration by the Court and that is that the Colville Confederated Tribes of the state of Washington have accepted the civil and criminal jurisdiction of the state of Washington under the provisions of Chapter 37.12 RCW and under the provisions of Public Law 280, 83rd Congress and the actual question for the Court to determine, is whether the United States government under the provisions of Public Law 280 of the 83rd Congress has relinquished to the states the right to impose the excise taxes as to the sale of cigarettes and has taken away from the Indians protection granted them un-

der the *Warren Trading Post Co. v. Arizona Tax Commission* case, supra.

In examining the legislation of the state of Washington, implementing Public Law 280 of the 83rd Congress, the Court finds that in RCW 37.12.060 limitations on the application of the acceptance of civil and criminal jurisdiction of the Indian tribes were laid out in detail and actually is verbatim the limitations set down by Public Law 280 of the 83rd Congress and the Court doesn't find in these statutes any direct limitation on the imposition of an excise tax as complained of herein. RCW 37.12.060 provides that there shall be no taxation of any real or personal property, including water rights and tide lands, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or subject to restriction against alienation imposed by the United States. The Court is satisfied, as argued by the Defendant, that if it was not intended to transfer the power to tax to the state, there would have been no necessity of mentioning the term "taxation" within the exclusionary provision of RCW 37.-12.060 and Public Law 280, supra. The Court is of the opinion that the taxation which had been imposed by the state in this case, has not been limited by the provisions of RCW 37.12.060 or by 28 USCA 1360 in sub-section (b) thereof.

In conclusion, the Court is of the opinion that, while the law as cited by the Plaintiff is controlling as to those Indian tribes which have not allowed the assumption of criminal and civil jurisdiction by the state of Washington, in those cases where civil and criminal jurisdiction has been accepted by the state of Washington, the members of the Indian tribes therein are subject to the excise taxes

complained of by the Plaintiff herein and the state *may further enforce the criminal laws of the state relating to the possession of unstamped cigarettes.*

The Plaintiff has further asked for declaratory judgment enjoining the state and requesting a restraining order against the state interfering with the possible potential sale by the Plaintiff of intoxicating liquor and the Court sees no reason why the opinion of the Court should not apply equally as well to the sale of intoxicating liquor.

The Court will sign Findings of Fact, Conclusions of Law and Judgment in accordance with the terms of this memorandum opinion.

DATED this 7th day of October, 1968.

s/ HEWITT A. HENRY
Hewitt A. Henry, Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Title omitted in printing)

This matter coming on to be heard this 21st day of March, 1968, before the Honorable Hewitt A. Henry, Judge of the above-entitled Court, plaintiff appearing by his counsel, Hancock & Kohls, and B. E. Kohls, and defendants appearing by John J. O'Connell, Attorney General, and J. Richard Duggan, Assistant Attorney General; the parties having introduced exhibits, presented the testimony of a witness at trial, filed trial briefs and made oral argument, the Court being fully advised in the premises, hereby makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

I.

Plaintiff, Leonard Tonasket, is now, and was at all times pertinent to this action, a full-blooded Indian, and duly enrolled member of the Colville Confederated Tribes of the State of Washington.

II.

At all times pertinent hereto, the plaintiff did operate a retail business on lands within the boundaries of the Colville reservation, which had been allotted to other members of the Colville Indian Tribe. These lands continue to be held in trust for the plaintiff by the United States of America. The business conducted by the plaintiff on these lands consists primarily of the sale of cigarettes at retail, but also involves retail sales of a limited number of other commodities.

III.

On January 13, 1965, the Colville Business Council, being the recognized governing body of the Colville Confederated Tribes, did issue its Resolution 1965-4, requesting that the Governor of the State of Washington, on behalf of the state of Washington, assume full and complete civil and criminal jurisdiction over the Colville Confederated Tribes, its members, and the lands held in trust for it and its members. This request was granted in a proclamation issued by the Governor of the State of Washington on January 29, 1965.

IV.

The plaintiff, in the operation of his business, has never collected any retail sales tax from his customers, and has never paid any excise tax to the state of Washington. On

April 10, 1967, the plaintiff was arrested and charged with one count each of the crimes of engaging in business without a valid registration certificate, of engaging in the business of selling cigarettes without a valid license to do so, of having cigarettes in his possession without the proper stamps affixed thereto, and of selling cigarettes without the proper stamps affixed thereto.

V.

By its rules and regulations, the defendant State of Washington, acting through its Department of Revenue, has precluded itself from requiring that Indians doing business entirely within an Indian reservation pay any business and occupation tax, or collect any retail sales tax upon sales made by them.

CONCLUSIONS OF LAW

I.

Plaintiff has standing to bring this action for declaratory judgment and for permanent injunction, having presented sufficient facts to bring this action within the requirements of the Uniform Declaratory Judgments Act, chapter 7.24 RCW. The Court has jurisdiction of the parties and of the subject matter of this proceeding.

II.

The state of Washington, pursuant to enabling federal legislation (Act of August 15, 1953, Public Law 280, 83rd Congress, First Session), has enacted its statute, RCW 37.12.021, permitting Indian tribes to request, and the Governor on behalf of the state to grant, assumption by the state of criminal and civil jurisdiction over the members and the territory governed by that tribe. As the term

"criminal and civil jurisdiction" is used in both the federal and state enactments, it is comprehensive, and includes the jurisdiction of the state to impose its excise taxes within the confines of any Indian reservation over which it has such jurisdiction.

III.

When, at the request of the tribe, the state assumed criminal jurisdiction, it assumed the duty of enforcing within the reservation all of the criminal sanctions which have been enacted by its legislature.

IV.

Under the provisions of 4 USCA § 104, gasoline or any other petroleum product sold by the plaintiff on the Colville Indian reservation, whether on trust or restricted lands or not, are taxable by the state of Washington.

V.

The plaintiff is not entitled to an injunction restraining the state of Washington from enforcing against the plaintiff on the Colville Indian reservation its civil and criminal laws relating to excise taxes.

DONE IN OPEN COURT this Jan. 21, 1969.

s / HEWITT A. HENRY
Judge

(Presentation Clause
omitted in printing)

JUDGMENT OF TRIAL COURT

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

LEONARD TONASKET, v. *Plaintiff,* THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Defendants.*	No. 38791 JUDGMENT

This matter coming on to be heard this 21st day of March, 1968, before the Honorable Hewitt A. Henry, Judge of the above-entitled Court, plaintiff appearing by his counsel, Hancock & Kohls, and B. E. Kohls, and defendants appearing by John J. O'Connell, Attorney General, and J. Richard Duggan, Assistant Attorney General; the parties having introduced exhibits, presented the testimony of a witness at trial, filed trial briefs and made oral argument, the Court being fully advised in the premises, did render its written Memorandum Opinion, having heretofore made and caused to be filed its Findings of Fact and Conclusions of Law;

Now, therefore, in accordance with said Findings of Fact and Conclusions of Law, IT IS ORDERED, ADJUDGED and DECREED that, because of the assumption of criminal and civil jurisdiction over the Colville reservation by the state of Washington, the members of the Indian Tribes residing on the Colville reservation, including the plaintiff, are subject to the laws of the state of Washington imposing excise taxes, including but not limited to the provisions of chapter 82.08 RCW, imposing a retail

sales tax upon all sales within the state of Washington, and, further, are subject to enforcement by the state of its laws imposing criminal sanctions against the possession within this state of cigarettes without payment of the state taxes thereon, and affixation of the proper indicia to indicate such payment.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED and DECREED that no injunction will lie restraining the defendants from enforcing against the plaintiff their civil and criminal laws relating to excise taxes, and that no order will be entered requiring the return of unstamped cigarettes seized from the possession of the plaintiff on February 10, 1967. Defendants shall be entitled to recover their costs and disbursements.

DONE IN OPEN COURT this Jan. 21, 1969.

/s/ HEWITT A. HENRY
Judge

Presented by:
J. Richard Duggan
Assistant Attorney General
Temple of Justice
Olympia, Washington 98501
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STATEMENT OF FACTS
(TRANSCRIPT OF TRIAL PROCEEDINGS)

(Title, Affidavit of Service and Index omitted in printing)

(R. 76)

BE IT REMEMBERED That heretofore and on, to-wit, the 21st day of March, 1968, the above-entitled Cause came regularly on for trial before the Honorable HEWITT

A. HENRY, one of the Judges of the Superior Court of the State of Washington, in and for the County of Thurston, sitting as Judge.

APPEARANCES:

The Plaintiff herein appearing and being represented by his attorney and counsel, B. E. KOHLS, of the firm of Hancock & Kohls;

The State of Washington herein appearing and being represented by J. RICHARD DUGGAN, Assistant Attorney General, State of Washington.

WHEREUPON, the following proceedings were had and done and testimony taken, to-wit:

(R. 77)

THE COURT: The Court is in session. This case comes on in the matter of Tonasket, Plaintiff, versus State of Washington and the Supervisor of the Tax Commission of the State of Washington, No. 38791. Are counsel ready?

MR. KOHLS: The Plaintiff is ready, Your Honor.

MR. DUGGAN: The Defendant is ready, Your Honor.

THE COURT: Are you ready to proceed?

MR. KOHLS: I don't believe it will be necessary, Your Honor, to make an Opening Statement. I think you are fully apprised of the questions involved. First, I would like to have an exhibit marked as Plaintiff's Exhibit 1.

THE CLERK: Plaintiff's Exhibit No. 1 is marked for identification.

(WHEREUPON, Request for Proclamation was marked for identification as Plaintiff's Exhibit No. 1.)

MR. KOHLS: Plaintiff's Exhibits Nos. 2 and 3, maps, Your Honor.

THE CLERK: Plaintiff's Exhibits Nos. 2 and 3 have been marked for identification.

(WHEREUPON, map of Okanogan County was marked for identification as Plaintiff's Exhibit No. 2.)

(R. 78)

(WHEREUPON, map of Town of Omak was marked for identification as Plaintiff's Exhibit No. 3.)

MR. KOHLS: Plaintiff's Exhibit 1, Your Honor, pertains to a copy of the Request For Proclamation of a resolution of the Colville Confederated Tribes submitting that its people and lands be subjected to the criminal or civil jurisdiction of the State of Washington; the various deeds, restricted deeds to the lands in question; a certified Indian census roll of 1937; and a certificate attesting to the degree of Indian blood of Leonard Tonasket.

We offer No. 1.

THE COURT: Any objection?

MR. DUGGAN: No objection.

THE COURT: Very well. What has been marked as Plaintiff's Exhibit No. 1 will be admitted in evidence.

(WHEREUPON, the Request for Proclamation and allied papers, marked Plaintiff's Exhibit No. 1, was received in evidence.)

MR. KOHLS: 2 and 3, Your Honor, are Metsker maps which contain a portion of the lands described in the deed and more or less for the purpose of education I would offer 2 and 3.

THE COURT: Any objection?

MR. DUGGAN: No objection.

(R. 79)

THE COURT: Very well. What have been marked as Plaintiff's Exhibits Nos. 2 and 3 for identification will be admitted in evidence.

(WHEREUPON, map of Okanogan County, marked Plaintiff's Exhibit No. 2, was received in evidence.)

(WHEREUPON, map of Town of Omak, marked Plaintiff's Exhibit No. 3, was received in evidence.)

MR. KOHLS: I would like to call Mr. Tonasket to the stand, please.

(R. 80)

LEONARD TONASKET, the Plaintiff herein, being called as a witness on his own behalf, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. KOHLS:

Q. State your full name, please.

A. Leonard Tonasket.

Q. You are the Plaintiff in this Cause, Mr. Tonasket?

A. Yes.

Q. And where do you reside?

A. In Omak.

Q. And is that on the east side of the Okanogan River?

A. Yes.

Q. And your home is there?

A. In East Omak.

Q. Now, you are familiar with the deeds that are contained in Plaintiff's Exhibit No. 1, are you not?

A. Yes.

Q. And these are the lands that you purchased in 1965?

A. Yes, sir.

Q. By trust deed?

A. Yes, sir.

Q. And these are the lands, are they not, where the business that you operated in 1966 and '67 and up to the present time are located?

A. Yes, sir.

Q. And was specifically located at the date of your residence and confiscation of the cigarettes?

(R. 81)

A. Yes, sir.

Q. And is that land still in the same status as of the date you acquired it?

A. Yes. sir.

Q. Now, are you a member of the Confederated Tribes of the Colville Indian Reservation?

A. I am.

Q. And what is your degree of Indian blood?

A. Full-blood.

Q. And are you an allotted Indian?

A. Yes.

Q. And the lands upon which this business was conducted is being held in trust by the United States Government, is it not?

A. Yes, sir.

Q. And what type of business building do you have located on these lands?

A. It is a little store.

Q. Can you describe it?

A. You mean—

Q. What is it made of and what did it cost you to construct?

A. It is made out of cement blocks.

Q. What was the cost of construction?

A. Around $6,000.00.

Q. And where did you acquire the funds to build your place of business?

A. From the Tribal Loan Office.

Q. By that you mean you used Tribal funds?

A. Yes, sir.

(R. 82)

Q. What type of business are you operating there at the present time?

A. Cigarette business.

Q. In addition to the sale of cigarettes, do you have any other retail items that you sell?

A. Candy and pop.

Q. And do you intend to expand your operation to include the sale of other retail goods?

A. I hadn't thought too much of it yet.

Q. Now, calling your attention to the month of February of 1967, were you operating this same business on the same location?

A. No.

Q. On the same lots?

A. The same lots, yes, sir.

Q. With the same status as to the type of deed?

A. Yes, sir.

Q. And on or during the month of February, 1967, were you visited by agents of the Washington State Tax Commission?

A. Yes, sir.

Q. Would you tell the Court what happened?

A. Well, I was over in town at the time and I came back and they were in the store, the Tax men, and they were packing out the cigarettes.

Q. And you have attached to your Complaint a copy of an itemized list of the cigarettes that were confiscated?

A. Yes.

Q. And you were subsequently placed under arrest and charged by an Information in Okanogan County, Cause No. 05284, were you not?

(R. 83)

A. Yes.

Q. Are you still operating this business?

A. Yes.

Q. Where is your land located in relation to the Omak Market?

A. One block north and west.

Q. In both of the lands in question upon which you operated your business and the Omak Market, are within the corporate limits of the City of Omak, are they not?

A. (No response.)

Q. Do you understand my question?

A. No.

Q. You are located within the city limits of Omak, are you not, your place of business?

A. I believe—I don't understand your question.

Q. If you know?

A. I don't understand what you mean.

Q. Is the land upon which you operate your business within the city limits of Omak?

A. No, I am not in the city limits.

Q. You are outside the city limits?

A. Yes.

Q. Is the Omak Market, do you know?

A. They are.

Q. Within the city limits?

A. Yes.

MR. KOHLS: That is all the questions I have.

(R. 84)

CROSS EXAMINATION

By MR. DUGGAN:

Q. Mr. Tonasket, do you have a legal description of your property upon which you are operating?

A. He has (indicating counsel).

Q. Would you like to take a look at the deed and give us the legal description of the land?

A. You want me to give you—

Q. I would like to have the legal description of the land on which your building is located from which you are operating your retail situation.

A. It is a portion of S. 700, Allotment S. 700.

Q. That is within the boundaries of the present Colville Reservation?

A. Yes, sir.

Q. How many cigarettes were seized from you at the time that the Tax Commission visited you?

A. It was over eight hundred. I don't know the exact amount.

Q. Over eight hundred what?

A. Cartons.

Q. Eight thousand packages?

A. Yes—no.

Q. Did you say yes or no, Mr. Tonasket?

A. I said no.

Q. You are saying eight hundred cartons are not eight thousand packages?

A. There was a little over eight hundred cartons.

Q. Did they have cigarette stamps on them, Washington State cigarette stamps on them?

(R. 85)

A. No.

Q. Have you ever registered with the Department of Revenue of the State of Washington?

A. No.

Q. For doing business either as a retail or wholesale seller of cigarettes?

A. No, sir.

Q. Have you ever acquired any cigarette stamps?

A. No.

Q. Have you ever made an effort to register just as doing business with the State of Washington?

A. No.

Q. Could you give me an estimate of your normal inventory—is eight hundred cartons approximately your normal inventory?

A. I don't know.

Q. Approximately how many cigarettes do you sell?

A. In a day, you mean?

Q. In any period.

A. Monthly around four hundred cartons I imagine.

THE COURT: Now, is this on a monthly basis, Mr. Tonasket, four hundred cartons?

THE WITNESS: No, a day.

THE COURT: A day?

MR. DUGGAN: Four hundred cartons a day?

That sounds more like it.

Q. (By Mr. Duggan) Are your customers both Indians and non-Indians, Mr. Tonasket?

(R. 86)

A. Yes, sir.

Q. What would you say the majority of them are?

A. I really couldn't say.

Q. Have you ever required any person who indicated that he was an Indian to show you his enrollment card?

A. No.

Q. It doesn't make any difference to you whether it is an Indian or non-Indian whom you sell them to then?

A. Not at all.

Q. You indicated, Mr. Tonasket, that you were a full-blooded Indian, according to the census roll that has

been submitted in evidence, your Allotment Number is S-2026. Do you know what that stands for?

A. No.

Q. Of what age were you allotted?

A. I really couldn't say, I believe it was probably about a year old.

Q. Under what law were you allotted?

A. I don't know about that.

Q. Were you allotted on the Colville Reservation?

A. Oh, yes.

Q. Mr. Tonasket, you testified you didn't give much thought to going into the general retail business. In your Complaint, however, you indicated that you intended to do so, does this mean that you have changed your mind?

A. What do you mean, changed?

Q. The Complaint that started this action stated that you intended to go into the general retail business. You have just testified that you never gave the question much (R. 87)
thought. Does that mean that you are now not planning going into the general retail business?

A. I really don't know. I have not thought too much about it.

Q. It was also alleged in your Complaint, Mr. Tonasket, that you intended to go into the business of selling at retail motor vehicles, gasoline for cars, have you given that much thought recently?

A. No, not really.

Q. At the time that the Tax Commission personnel visited your place of business, you say that you were placed under arrest?

A. That is what it had on the warrant.

Q. Were you charged with a crime?

A. Yes.

Q. Have you been tried on that charge?

A. We had a hearing.

MR. KOHLS: I might advise he has not been tried on that charge. As a matter of fact, that trial pendency is awaiting the result of this trial.

MR. DUGGAN: I have no further questions.

MR. KOHLS: I have no further questions.

THE COURT: Very well. You may step down, Mr. Tonasket.

(WITNESS EXCUSED.)

(R. 88)

MR. KOHLS: The Plaintiff will rest, as far as the facts are concerned.

THE COURT: Do you have any evidence?

MR. DUGGAN: I have no evidence, Your Honor.

THE COURT: Very well.

(WHEREUPON, respective counsel having submitted briefs and made oral arguments to the Court; the Court took the matter under advisement and made the following

Memorandum Opinion, dated the 7th day of October, 1968:)

(Memorandum Opinion and Certificate omitted in printing)

OPINION OF WASHINGTON SUPREME COURT

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

LEONARD TONASKET, *Appellant*, v. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Respondents.*	No. 41640 EN BANC Filed Sept. 2, 1971

Appeal from a judgment of the Superior Court for Thurston County, No. 38791, Hewitt A. Henry, J., entered January 21, 1969. *Affirmed.*

Action to contest the validity of cigarette tax and licensing requirements. Plaintiff appeals from a judgment in favor of the defendant.

ROSELLINI, J.—The plaintiff is a Colville Indian of full blood, who owns a store on allotted land which is held in trust by the United States Government. His business is mainly that of selling cigarettes, and he sells approximately 400 cartons each day. His customers are Indians and non-Indians, but the majority are nonIndians.

The plaintiff has operated without the license required by RCW 19.91.120 and has not registered with the State of Washington as required by RCW 82.32.030. Furthermore, he has not complied with the requirements of RCW 82.24.050, which impose upon the cigarette retailer the duty of affixing tax stamps to cigarettes sold. The tax on 400 cartons of cigarettes would have been $440, so the state was losing at least $13,200 per month as a result of the plaintiff's operations.

In February of 1967, agents of the Washington State Department of Revenue entered the plaintiff's store, on reservation land,[1] and seized cigarettes which he had in stock. They placed the plaintiff under arrest and charged him by information with violation of the requirements of these statutes. Violations in each instance carry criminal penalties.

After the information was filed, the plaintiff brought this action for a declaratory judgment. In his complaint he declared that he was and had been in the business of selling cigarettes without affixing the tax stamps required by state law. He further declared that it was his intention in the future to expand his mercantile operation and sell other items of merchandise, including but not limited to items of wearing apparel, and appliances. He declared that it was his intention not to collect the tax imposed by statute upon sales in the state of Washington. He also declared his intent to become a vendor of liquor by the bottle, but later abandoned this declaration.

The plaintiff asked the court to declare his right to do business with Indians and nonIndians free of the requirements of the state laws pertaining to the collecting and remitting of retail sales taxes. He further asked that the Washington State Department of Revenue be enjoined from harassing him by attempting to enforce these laws.

This relief was denied by the trial court and the action was dismissed, the court finding that the plaintiff is subject to the laws of the State of Washington in the operation of his retail cigarette business.

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1. The part of the reservation on which the store is situated is within the city of Omak.

The single question on this appeal is whether the Colville Confederated Tribes of the State of Washington and its members, by accepting the criminal and civil jurisdiction of the state, authorized by Public Law 83-280, ch. 505, 67 Stat. 588, have agreed to be bound by the particular statutes, the terms of which the plaintiff has admittedly violated.

The answer lies in the scope of Public Law No. 83-280, authorizing states to assume criminal and civil jurisdiction of Indian tribes, and RCW 37.12, wherein this state declared that, upon receipt of a resolution from any tribe expressing its desire that its people be subject to such jurisdiction, the Governor shall issue a proclamation that such jurisdiction shall apply. The constitutionality of this method of assuming jurisdiction over Indian tribes has been tested in this court and has been sustained. *Makah Indian Tribe v. State,* 76 Wn.2d 485, 457 P.2d 590 (1969); *State v. Bertrand,* 61 Wn.2d 333, 378 P.2d 427 (1963); *State v. Paul,* 53 Wn.2d 789, 337 P.2d 33 (1959), *appeal dismissed,* 361 U.S. 898, 4 L.Ed.2d 155, 80 S.Ct. 203 (1959).

Public Law No. 83-280 (67 Stat. 588), which was enacted in 1953 and was in effect when this lawsuit arose, provided, *inter alia,* that certain named states should have jurisdiction over offenses committed by or against Indians on or off the reservation to the same extent that those states had jurisdiction over offenses committed elsewhere within the state and that the criminal laws of such state should have the same force and effect within such Indian country as they had elsewhere with the state. (Section 2.) It further provided in section 4 that each of those listed states should have jurisdiction over civil causes of action between Indians or to which Indians were parties, which arose in

Indian country, to the same extent that they had jurisdiction over other civil causes, and that

> those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State . . .

Section 2 contained the following limitation:

> (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Section 4, conferring civil jurisdiction, contained the following limitation:

> (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

and this reservation:

> (c) Any tribal ordinance or custom heretofore or

hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

It will be noted that these sections, by their terms, applied only to the states listed therein. However, in sections 6 and 7, the Congress authorized other states to assume criminal and civil jurisdiction.

In 1968, after this action was instituted, Congress amended section 7 by Public Law 90-284, Title IV, § 401, April 11, 1968, 82 Stat. 78, and added a requirement that before assumption of jurisdiction, a state must obtain the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected. This is the present law. *See* 25 U.S.C. § 1321 (1968). Although consent of the tribe was not required by federal law when Washington assumed jurisdiction over the Colville tribe, by its own statute it had made consent a prerequisite for the type of jurisdiction which it asserted over the plaintiff when it caused his arrest for the offenses involved in his sale of cigarettes.

RCW 37.12.021 provides:

Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, or any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty

days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: *Provided*, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060.

As the plaintiff admits in his brief, on January 13, 1965, the Colville Business Council issued resolution 1965-4, requesting the state to assume criminal and civil jurisdiction over the Colville tribe. On January 29, 1965, Governor Daniel J. Evans issued a proclamation assuming jurisdiction over the tribe.

Thus the state has been authorized to assume and has assumed jurisdiction over offenses and civil disputes occurring on Indian reservations and involving Indians, and the question is whether there is any limitation upon that jurisdiction other than those limitations set forth in Public Law No. 83-280. The specified restrictions upon state exercise of jurisdiction are designed to protect from state interference property held in trust for the Indians by the federal government or upon which there exists a re[illegible]iction against alienation and the fishing, trapping and hunting rights of the Indian. The plaintiff does not contend that the action of the state in this case violates these limitations. Rather his position is that it was not the intent of Congress to authorize states to apply their revenue laws to business activities of Indians.

[1-3] The trial court was of the opinion that the authorization contained in Public Law No. 83-280 was plenary,

with only the limitations expressed therein, and gave the states power to regulate the merchandising activities of Indians in the same way that they regulate such activities of their citizens generally, and to levy excise taxes upon them. We agree.

The plaintiff does not argue that the act is ambiguous, but the thrust of his argument seems to be that the Congress had in mind certain limitations upon the exercise of state jurisdiction which it did not set forth in the law which it enacted. It is well settled that the court will not read into an act provisions which the court conceives that the legislative body has unintentionally omitted. *Department of Labor & Indus. v. Cook*, 44 Wn.2d 671, 269 P.2d 962 (1954). Furthermore, we cannot assume that the legislative body had in mind exceptions which it did not express when we have before us an act in which certain exceptions are clearly and concisely set forth. To use the venerable phrase, expressio unius est exclusio alterius. As expressed in more contemporary language in *State v. Roadhs*, 71 Wn.2d 705, 430 P.2d 586 (1967), affirmative specification excludes implication.

Public Law No. 83-280 clearly forbids a state to tax property held in trust for Indians over whom it assumes jurisdiction or to take other specified actions in relation to that property. The section protecting fishing, trapping and hunting rights would undoubtedly prohibit a tax or regulation which operated to deprive the Indian of those rights. But there is expressed in the act no other limitation upon the right of the state to impose taxes upon and regulate the activities of an Indian under its general laws applicable to all citizens. Under the rules of interpretation which we

have stated, there is no room to imply other limitations upon the operation of the general laws of the state.

If there were any doubt in our minds that it was the intent of Congress to make all the laws of the state, with their benefits and their burdens, applicable to the consenting tribes and their members (with exceptions noted), that doubt would be resolved by an examination of the committee report upon which the Congress acted when it passed Public Law No. 83-280. We think the purpose is manifest in the language used in the act, giving it its ordinary and commonly understood meaning, and the record shows that the purpose expressed was indeed the purpose intended.

In Senate Report No. 699, which repeats in substance House Report No. 848 on House Resolution 1063 (which became Public Law No. 83-280), the following statement regarding the act and certain companion legislation appears:

> Your Committee on Interior and Insular Affairs, through its Indian Affairs Subcommittee, and with the continuing cooperation of the Secretary of the Interior and the Indian Bureau, has, during this session, operated in five major areas of legislation affecting the Indians. This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such.

U.S.C. Cong. & Admin. News 2409 (1953).

The report drew attention to the fact that, owing to the lack of state jurisdiction to prosecute offenses and limitations upon the federal jurisdiction, as a practical matter enforcement of law within the reservation had been left largely to the Indian groups themselves, and that Indian

tribes often are not sufficiently organized to preserve law and order on the reservation. The report said:

> [C]onsequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.

U.S.C. Cong. & Admin. News 2412 (1953).

Upon the question civil jurisdiction, the report stated:

> Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.
>
> After consideration of the proposed legislation, the committee concluded that: any legislation in this area should be on a general basis, making provision for all affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, insofar as these customs or ordinances are not inconsistent with applicable State laws.

U.S.C. Cong. & Admin. News 2412 (1953).

We cannot conceive that it was the intent of Congress to extend to Indians only the protection and benefits of state laws, with none of their attendant duties and responsibilities, and we find no such intention expressed in the statute. True, there are certain immunities and protections afforded the Indians in the enjoyment of their trust properties and their rights of fishing, trapping and hunting.

These place the Indian in a position of advantage not shared by other citizens.

This court has been liberal in its interpretation of the provision forbidding states which assume jurisdiction from placing burdens upon trust property. In *Snohomish County v. Seattle Disposal Co.*, 70 Wn.2d 668, 425 P.2d 22 (1967), we held that a zoning restriction could not be given effect to restrict the use of property upon which there was a restraint against alienation, even though that property had been leased to nonIndians.

The Supreme Court of the United States has not gone so far in protecting allotted and restricted lands from encumbrance. In *Oklahoma Tax Comm'n v. Texas Co.*, 336 U.S. 342, 93 L.Ed. 721, 69 S.Ct. 561 (1949), it held that the interests of nonIndian lessees in such lands were subject to state gross production taxes on petroleum produced from such lands, overruling a number of cases which had held to the contrary and reaffirming *Thomas v. Gay*, 169 U.S. 264, 42 L.Ed. 740, 18 S.Ct. 340 (1898), wherein the court had sustained a state tax on cattle grazing on tribal lands leased from Indians by the nonIndian owner of the cattle. The court found that any burden upon the land resulting from such a tax was too remote to justify a rule which would aid the lessee in escaping a nondiscriminatory tax to which he would otherwise be subject and thus to thwart the taxing power of the state.[2]

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2. We dealt with a question concerning the imposition of the tax on wholesalers in *Makah Indian Tribe v. Tax Comm'n*, 72 Wn.2d 613, 434 P.2d 580 (1967), and reached a result in harmony with that of the United States Supreme Court in *Oklahoma Tax Comm'n v. Texas Co.*, 336 U.S. 342, 93 L.Ed. 721, 69 S.Ct. 561 (1949). Note that there was no showing in that case that the Makahs submitted to the jurisdiction of the state under RCW 37.12.021, as authorized by Public Law No. 83-280.

The court quoted with approval the following excerpt from *Helvering v. Mountain Producers Corp.*, 303 U.S. 376, 82 L.Ed. 907, 58 S.Ct. 623 (1938), wherein it noted the supposed truism that the power to tax is the power to destroy,[3] and said:

> "In numerous decisions we have had occasion to declare the competing principle, buttressed by the most cogent considerations, that the power to tax should not be crippled 'by extending the constitutional exemption from taxation to those subjects which fall within the general application of nondiscriminatory laws, and where no direct burden is laid upon the governmental instrumentality and there is only remote, if any, influence upon the exercise of the functions of government.' *Willcuts v. Bunn*, 282 U.S. 216, 225, and illustrations there cited." 303 U.S. at 385.

336 U.S. at 361.

This opinion of the United States Supreme Court would indicate that that court now entertains a liberal view with respect to the taxing power of states, but the plaintiff calls our attention to *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U.S. 685, 14 L.Ed.2d 165, 85 S.Ct. 1242 (1965), wherein the court held that the State of Arizona could not impose an excise tax upon a federally-licensed Indian trader based upon the gross proceeds of sales upon the reservation of the Navajo Indians. The plaintiff relies heavily upon this case and contends that it stands for the proposition that Congress has preempted the field of Indian trading, leaving no room for state regulation or imposition of state taxes.

The facts of that case, however, are so different in ma-

3. The opinion recalls the words of Mr. Justice Holmes in *Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U.S. 218, 72 L.Ed. 857, 48 S.Ct. 451, 56 A.L.R. 583 (1928), "The power to tax is not the power to destroy while this court sits."

terial aspects from the facts of this case that the law enunciated therein has no application here. There, the company upon which the tax was sought to be imposed had been licensed by the Commissioner of Indian Affairs to trade with the Indians. Here, the plaintiff holds no such license.[4] Furthermore, admittedly, the bulk of his trade is with non-Indians. Thus, the state tax does not interfere with a federal licensing policy as it did in the Arizona case.

However, we do not rely upon this distinction as the basis for our decision. Rather, the most important distinguishing feature is that the Navajo Indians of Arizona had not submitted themselves to the jurisdiction of the state, and the state had not assumed such jurisdiction. The court said:

> Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities.

380 U.S. at 690.

Observing that Congress had evidenced a purpose of ensuring that no burden should be imposed upon Indian traders for trading with Indians on reservations except as authorized by acts of Congress or by valid regulations promulgated under those acts, the court said that the tax in question would put financial burdens upon the trader or the Indians with whom he traded in addition to those Congress or the tribes had prescribed, and could thereby disturb the statutory plan for insuring that the prices paid by the Indians were fair. The court continued:

4. We are advised by counsel for the Washington State Department of Revenue that the Commissioner has never exercised the power given by 25 U.S.C. § 261 (1876) to license Indian traders in this state, and the plaintiff has not questioned the accuracy of his statement.

> And since federal legislation has left the State with no duties or responsibilties respecting the reservation Indians, we cannot believe that Congress intended to leave to the State the privilege of levying this tax.

(Footnote omitted.) 380 U.S. at 691.

Implicit in this language is a declaration that, had the Congress placed duties upon the state or authorized it to assume duties with respect to the Indians and had the state assumed such duties, a different result would have been indicated.

Here, the Congress has not only failed to preempt the field of Indian trading but it has authorized the state to assume jurisdiction over such trading; the Colville tribe has requested that the state assume such jurisdiction, and the state has accepted the responsibility. Unlike Arizona, the State of Washington does indeed have duties to perform for the Colville Indians. These Indians now enjoy all the rights and privileges which are enjoyed by citizens generally. They have the protection of all the state's criminal laws and the services of its courts and all of the benefits to which other citizens similarly situated are entitled under its civil laws.

It was the purpose of the Congress in enacting Public Law No. 83-280 to release from federal supervision and protection those Indians who wish to be released, except in the areas expressly reserved in the act, and to subject them instead to the jurisdiction of the states. It was the evident purpose of Congress to facilitate the emergence of the Indians from his inferior status as a protected (but nevertheless disadvantaged) ward of the federal government to the status of full citizen, both of the state in which he resides and of the United States, with all the privileges and responsibilities of such status.

It is suggested by the plaintiff that the regulating and taxing on his sales of cigarettes by the state interferes with tribal government. There is no showing of any actual conflict between the state laws and tribal laws, but if there were such a conflict, the state law would, under Public Law No. 83-280, be controlling. That act provides that only such tribal customs and ordinances as are not in conflict with state laws are to be preserved.

The plaintiff in this case has entered into the commercial life of the community in which he lives. He sells a product manufactured by others, the sale of which the state has found it desirable and necessary to regulate. The plaintiff does not question the right of the state to impose a tax upon the sale of cigarettes generally. But he contends that he should be exempt from the duty of collecting and remitting that tax and should thus enjoy a competitive advantage over nonIndian sellers of cigarettes. He has cited no authority which supports this proposition.

We are convinced that, when Congress enacted Public Law No. 83-280, authorizing the states to assume jurisdiction over Indian tribes and their members and providing that, after such assumption the civil laws of the state should apply to the Indians on the reservations the same as to others, it intended that the only exceptions to the operation of those laws should be those enumerated in the act. The plaintiff's business activities do not fall among those exceptions.

The judgment is affirmed.

HAMILTON, C.J., FINLEY, HALE, NEILL, SHARP, and WRIGHT, JJ., and RYAN and MIFFLIN, JJ. Pro Tem., concur.

APPELLANT'S PETITION FOR REHEARING TO WASHINGTON SUPREME COURT

(Title omitted in printing)

TO: The Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Washington:

Appellant herein, Leonard Tonasket, respectfully presents this petition for a rehearing of the above cause and, in support thereof, respectfully shows:

1. The appeal in the cause was argued before this Court on May 24, 1971.

2. On September 2, 1971 this Court rendered its decision in favor of the respondents and against the appellant, affirming the judgment of the trial Court. In doing so, this Court ruled upon a major legal question in the field of federal Indian law which was neither presented by respondents nor opposed by appellant in the Superior Court, nor briefed or argued by either party in the Superior Court or this Court, namely, the question whether Public Law 83-280 repealed by implication the Federal Indian Trader Statutes, 25 U.S.C. §261, et seq. Since the issue is of such major importance nationally and must ultimately be decided by the Supreme Court of the United States, it is imperative that this Court grant appellant's petition for rehearing and allow counsel for both parties to thoroughly brief the matter and present further oral argument to the Court.

3. Appellant seeks a rehearing upon the following grounds:

a. Appellant is a federally sanctioned Indian trader by virtue of 25 U.S.C. §261, et seq., and as such is not subject to any regulation by the State of Washington.

b. Congress has preempted the field of regulation of Indian trading and Public Law 83-280 which authorizes the states to assume jurisdiction over Indians for certain purposes, does not repeal by implication the Federal Indian Trader Statutes, 25 U.S.C. §261, *et seq*.

c. Public Law 83-280 does not constitute an affirmative grant to the State of Washington of the power to regulate the use of trust land within an Indian Reservation by imposing a tax on an enrolled Indian operating a retail merchandise business thereon.

d. Public Law 83-280 is a law and order enactment and does not constitute an affirmative grant to the State of Washington of the power to tax either federal Indian traders or an enrolled Indian operating a retail merchandise business on trust land within an Indian Reservation.

e. Public Law 83-280 does not grant to the State of Washington the power to tax an enrolled Indian operating a retail merchandise business on trust land within an Indian Reservation, thereby violating and impinging upon tribal sovereignty.

f. State taxation of business activities of appellant in the instant case would seriously impair or destroy the federal government policy encouraging economic development of Indians and Indian tribes.

g. The court has overlooked and failed to apply relevant decisions and statutes in making its decision as further outlined in the brief attached hereto.

4. This petition is submitted in good faith and not for the purposes of delay.

Respectfully submitted,

/s/ ROBERT L. PIRTLE
/s/ MASON D. MORISSET
Of Attorneys for Appellant

DATED: October 1, 1971

REMITTITUR FROM WASHINGTON SUPREME COURT TO TRIAL COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEONARD TONASKET, *Appellant,* v. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Respondents.*	REMITTITUR No. 41640 THURSTON COUNTY No. 38791

The State of Washington to:

The Superior Court of the State of Washington in and for Thurston County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on September 2, 1971, became the final judgment of this court in the above entitled case on November 15 1971. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows: Two hundred eighty-five and 50/100 ($285.50) in favor of respondent and against appellant and against United Pacific Insurance Co.

The Petition for Rehearing was denied by order dated November 15, 1971.

cc: Ziontz, Pirtle & Fulle

Mr. Robert L. Pirtle and Mr. Mason D. Morisset.

Honorable Slade Gorton, Attorney General
Mr. Michael B. Hansen, Asst.
Mr. Timothy R. Malone, Asst.

Court Reporter

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 15 day of November, A.D. 1971.

WILLIAM L. LOWRY
Clerk of the Supreme Court,
State of Washington.

[SEAL]